No. 198

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 198.

JOHN G. JENKINS AND OTHER DIRECTORS AND PUBLIC OFFICE SUCCESSORS OF THE FIRST NATIONAL BANK OF HUDSON,

Plaintiffs-in-Error,

vs.

BARZILLAI G. HUNT, PRESIDENT, AND JOHN SCHLICHER, JR., ET AL., CONSTITUTING THE BOARD OF ASSESSORS OF THE CITY OF ROCHESTER AND THE TAXING YEAR 1897,

Defendants-in-Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

STATEMENT AND BRIEF OF THE DEFENDANT-IN-ERROR.

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(6618) MARTIN B. BROWN CO., Printers and Stationers, 49 & 51 Park Place, New York.

Supreme Court of the United States.

OCTOBER TERM, 1901.

PEOPLE *ex rel.* JOHN G. JENKINS and others, stockholders of First National Bank of Brooklyn,

Plaintiffs-in-Error,

against

BARZILLAI G. NEFF, President, and JOHN H. DRESCHER, Jr., *et al.*, Assessors, constituting the Board of Assessors of the City of Brooklyn for the taxing year 1897.

BRIEF FOR DEFENDANTS IN ERROR.

Statement.

This is a writ of error bringing up for review a final order of the Supreme Court of New York, entered upon a remittitur from the Court of Appeals, which affirmed the judgment of the lower courts confirming an assessment made by the officials of the then City of Brooklyn in 1897 upon the shares of stock of the First National Bank of Brooklyn. The proceedings in the State courts were

upon a writ of certiorari issued to review that assessment. Under the State practice in such cases, the matter was sent to a Referee to take proof and report with his opinion. Upon the coming in of the Referee's report it was modified in certain particulars not here relevant, and as so modified was confirmed by Mr. Justice Hirschberg of the New York Supreme Court, whose opinion will be found on page 82 of the record, preceding the order entered upon his direction on page 89 of the record. This order was unanimously affirmed by the Appellate Division of the Supreme Court upon the opinion of Mr. Justice Woodward, printed at page 110 of the record, the order of affirmance being printed at page 117. Upon appeal to the Court of Appeals the order was again affirmed upon the opinion of Mr. Justice Bartlett, printed at page 119 of the record, the final order entered upon the remittitur being printed at page 126 of the record.

The ground of objection to the assessment is that it was in violation of the requirement of section 5219 of the U. S. Revised Statutes that the taxation of shares of stock in national banks "shall not be at a greater rate than is "assessed upon other moneyed capital in the hands of "individual citizens." It is difficult for the plaintiffs-in-error to point out any specific statute of the State of New York that is repugnant to this statute of the United States, for the reason that section 24 of the New York Tax Law as to the taxation of shares of stock in national banks exactly complies with the conditions prescribed by said section 5219. The contention, therefore, must be that the Assessors, in pursuance of "an authority exer-"cised under" the State of New York, have in some way transgressed the provisions of the Federal statute; and the point mainly, if not wholly, relied upon in support of this contention is that the method pursued by the Assessors in taxing certain trust companies of the City of Brook-

lyn operated as an unlawful discrimination against the shareholders of this national bank.

The counsel for the plaintiffs-in-error virtually concede (see p. 29 of their brief) that they have no standing unless they can succeed in distinguishing this case from the case of *Mercantile Bank* vs. *New York* (121 U. S., 138). The language of the brief is, "We concede that "if that decision is a controlling authority for the decision "of the case at bar, then we have no right to be here."

It will be mainly the effort in this brief to show that there is nothing in the record here which distinguishes the question now presented from that which was passed upon by this Court in the Mercantile Bank case.

The facts have been set forth with such amplitude in the somewhat voluminous brief of the plaintiffs-in-error that it would only be confusing to attempt here a detailed statement of them. So far as relevant, they can be more intelligibly referred to in the points which follow. The material facts of the case, and also the history of the New York legislation and of the course of judicial decisions on the question are set forth with great precision in the opinion of Mr. Justice Woodward at pages 110 to 115 of the record.

POINTS.

I.

The case of Mercantile Bank against New York remains a controlling authority in favor of the defendants-in-error.

The precise question there determined after the fullest consideration was that the methods adopted under the

Tax Laws in New York for assessing trust companies and the laws exempting savings banks from taxation are not repugnant to the requirement in section 5219 of the U. S. Revised Statutes that the taxation of shares of stock in national bank associations "shall not be at a greater rate "than is assessed upon other moneyed capital in the hands "of individual citizens of such state."

It is now claimed here by the plaintiffs-in-error that the Mercantile Bank case was decided upon an agreed statement of facts differing from the facts established by the evidence in this record as to these Brooklyn trust companies. It is further claimed that certain statutes on the subject, passed by the New York Legislature since the decision of the Mercantile Bank case, must be taken as modifying the force of that decision. The learned counsel for the plaintiffs-in-error wholly misinterpret the evidence in the record bearing upon the business conducted by the Brooklyn trust companies. In brief, the argument urged by counsel is that, whereas in the Mercantile Bank case this Court assumed and held that the banking part of the business of trust companies was merely ancillary to their business as trustees and guardians of estates, it is now shown, as to these particular trust companies in Brooklyn, that their banking business was their chief business, the other being trifling and incidental. It is repeatedly stated throughout the brief of counsel for the plaintiffs-in-error that these Brooklyn trust companies used their capital and surplus in direct competition with the First National Bank. It is said that during the period in question substantially their entire assets were devoted to an ordinary banking business; that they did everything a bank does, except to issue circulating notes, and did little or nothing else. These assertions are predicated upon a total misapprehension of what the record itself shows on this subject. The repeated assertions to the

effect that the trust business of these companies is trivial and incidental rests upon the testimony of certain officers of the trust companies (see p. 81 of the record).

This testimony was given in answer to questions asking for statements of the amount of money deposited with the companies. The answer, for example, of the secretary of the Franklin Trust Company gave the following figures:

Deposits in trust	$232,160 36
General deposits	5,110,335 39
Loaned on collateral	1,558,911 44
Loaned on personal securities, including bills purchased	460,291 20

The answers of the other officers of the trust companies examined showed a somewhat similar proportion between "deposits in trust" and general deposits. Of course, these items of "deposits in trust" did not include, and it was never for a moment suggested that they included, the millions in trust estates and other trust investments held and managed by the trust companies, to say nothing of the millions in mortgages which the trust companies hold as security for bonds issued by railroad companies and other mortgagors. The words "deposits in trust" mean only uninvested trust funds which are carried as deposits of money. The fact that the Brooklyn trust companies exercised all the powers given to them by the New York statutes was expressly stipulated in the record, and this general concession is frequently utilized by the counsel for the plaintiffs-in-error in their brief (Record, p. 78; Brief, p. 48).

The mistake is equally palpable in the repeated assertions that the trust companies used their capital in competition with the banks in making collateral loans and in

purchasing or discounting commercial paper. Such an assertion seems to have no support whatever in the record, except incidentally in the testimony of Mr. Sniffen of the *Manufacturers' Trust Company*. At page 78 of the record Mr. Sniffen says: "The capital of our company "consists of securities and are deposited by law, but the "capital was paid in money. We use our capital, surplus "and undivided profits for the purpose of making a profit "upon it from its use as money. When we make a loan "on collateral we use a collateral note." And he added further: "I was employed in the Chemical National "Bank for eight years. We keep deposits and pay out "money on checks in the Manufacturers' Trust Company "in the same manner as is done in the Chemical Bank. I "am familiar with the way in which the national banks in "New York City and Brooklyn do business, by reason "of my connection and association with them in business.

"*Q.* Does your trust company do business in the same "general way that the national banks do, of your own "knowledge?

"*A.* In banking, yes."

Of course, this testimony must be interpreted in accordance with the limitations clearly imposed by the New York statutes as to the capital of trust companies. The expression in the witness' testimony above quoted, "the "capital of our company consists of securities and are de-"posited by law," must itself be interpreted as excluding the idea that he meant to be understood as testifying that the trust company loaned out this capital to customers on collateral, or in discounting notes.

Section 159 of the New York Banking Law, which section re-enacts the statutes on the subject in force at the time of the decision in the Mercantile Bank case and was

the statute in force at the time of the making of the assessments here in question, provides:

> "The capital of every such corporation shall be "invested in bonds and mortgages on unincumbered "real property in the state worth at least double the "amount loaned thereon, or in stocks or bonds of "this state or of the United States, or of any county "or incorporated city of this state duly authorized "by law to be issued."

This requirement does not extend to the surplus of trust companies, but it affirmatively appears in the record here that not only was the entire capital of these trust companies invested in pursuance of the statute, as would in any event be presumed, but that the surplus of the companies was also very largely and in some cases entirely invested either in securities of this descrption or in stocks of other corporations taxed upon their capital (see Exhibits 1, 2, 3, 4, 5, 6, 7 and 8, pp. 91 to 104 of the record).

Conceding, in the light of the numerous decisions of the Court on the subject, that investments in bond and mortgage, in government bonds and in State and municipal bonds, are to be regarded as "moneyed capital," it is nevertheless obvious that such "moneyed capital" of these trust companies invested in that manner did not and does not, in fact, come in competition with the national banks. Any attempt on the part of a trust company to loan out its capital on collateral or in the purchase of commercial paper would be a palpable violation of the statute. Trust companies can not even indirectly use the capital invested according to the requirements of the statute for anything that could be characterized as a banking business. The very purpose of the statutory requirement is to assure financial stability and to make the capital of such com-

panies a substitute for the security ordinarily required from individuals when appointed as trustees, guardians, executors, committees of lunatics, etc. (see section 158 of the New York Banking Law).

The gravamen of the complaint of the plaintiffs-in-error is that these trust companies escaped taxation on their capital by reason of the fact that both the capital and surplus were invested in securities which are exempt from taxation. This fact alone demonstrates, if further demonstration were needed, that the trust companies were not employing either their capital or surplus in competition with the national banks. They could not have obtained the allowance for exemptions complained of had their capital and surplus been used in making loans and in dealing in commercial paper, because such items of property are not exempt from taxation. The one most material distinction between trust companies and banks in the consideration of this question is that the banks are permitted to use their capital for distinctively banking purposes, including the right to issue circulating notes upon government bonds held by them, whereas the trust companies cannot do this. It will be seen by an analysis of the exhibits above referred to that, as a matter of fact, the money used by these trust companies in a banking business was in all cases less than the amount of money held by them on general deposit. It is true that money thus held by financial institutions on deposit has sometimes been spoken of as capital employed by them, but this is an inaccurate use of language. It confuses the word "capital" with the word "assets." There are no doubt cases where the word "capital" can be accurately applied to money that is in fact borrowed, but borrowed capital is money permanently borrowed for distinctive use as capital in a business. The word cannot with any propriety be applied to money deposited in a trust company and

payable on demand. No doubt the earning capacity of a financial institution is greatly increased by the volume of the deposits which it secures from customers. The volume of such deposits is dependent not only on the capital which the corporation has, but on the public confidence in its sound business administration. It is thus obvious upon the facts established in this record that the business of these trust companies was substantially the same as was stated by the Court in the Mercantile Bank case. This Court there said (121 U. S., at p. 159):

> "Trust companies, however, in New York, accord-
> "ing to the powers conferred upon them by their
> "charter and habitually exercised, are not in any
> "proper sense of the word banking institutions"
> etc.

The point is incidentally urged on behalf of the plaintiffs-in-error that Trust Companies are now and were in 1897 included in the general statute of the State of New York known as the "Banking Law." So also are Savings Banks, Building and Mutual Loan Corporations, Mortgage, Loan and Investment Corporations and Safe Deposit Companies. The previous statutes have simply been re-enacted, so far as the questions here involved are concerned, and these various kinds of financial corporations are for convenience grouped together in the new revision of the general statutes of the State under the title "Banking Law."

The only changes made in the statute law applicable to trust companies, upon which the plaintiffs-in-error found their contention that the force of the decision in the Mercantile Bank case is now inapplicable by reason of such changes, are two:

1. Chapter 696 of the Laws of 1893 amended section

156 of chapter 689 of the Laws of 1892 (the Banking Law) so as to confer upon trust companies the right * * *

"11. To exercise the power conferred on indi-
"vidual banks and bankers by section fifty-five of
"this act, subject to the restrictions contained in said
"section."

Section 55 of the act here referred to provides as follows:

"Every bank and individual banker doing business
"in this state may take, receive, reserve and charge on
"every loan or discount made or upon any note, bill of
"exchange, or other evidence of debt, interest at the
"rate of six per centum per annum, and such interest
"may be taken in advance, reckoning the days for
"which the note, bill or evidence of debt has to run."

Then follows a statement of the penalty for taking usurious interest, limiting it to forfeiture of twice the amount of interest, and then follow the words:

"The purchase, discount or sale of a *bona fide* bill
"of exchange, note or other evidence of debt payable
"at another place than the place of such purchase, dis-
"count or sale at not more than the current rate of
"exchange for sight drafts, or a reasonable charge
"for the collection of the same, in addition to the
"interest, shall not be considered as taking or receiv-
"ing a greater rate of interest than six per cent. per
"annum."

The true intent and meaning of section 55 was to place and continue banks and individual bankers on an equality in the particulars therein referred to with the national banks. This is the purpose declared in the act itself. The extraordinary argument is made by the learned counsel for the plaintiffs-in-error that the effect of this

act of 1893 was to confer on trust companies the right to discount commercial paper, which they did not before possess. The plain and sufficient answer to this argument is that the power given to banks to discount paper is not given by section 55 of the Banking Law, but by section 43 of the Banking Law, in article II., which article is expressly devoted to "Banks" properly so-called. Of course, the right of individual bankers to discount paper is not dependent on legislation, though such legislation may, no doubt, in proper cases, restrict its exercise.

The perfectly plain and obvious and only purpose of the Act of 1893 was to put trust companies, in addition to banks and individual bankers, upon an equality with the national banks in the matter of the usury laws. Prior to that legislation a violation of the New York usury law involved the forfeiture of the entire loan. Congress had relieved the national banks from this extreme penalty, and had also defined certain cases in which they might charge interest in advance, and might add the rate of exchange to the lawful rate of interest (U. S. R. S., secs. 5197–5198). The trust companies already possessed the power to purchase commercial paper, and the difference between purchase and discount may be conceded to be not very material. It suffices to say that if the trust companies can lawfully discount the notes of their customers, it is a power not given them by this statute.

2. Section 163 of chapter 689 of the Laws of 1892 provides that

> "every trust company incorporated by a special law
> "shall possess the powers of trust companies in-
> "coporated under this chapter and shall be subject
> "to such provisions of this chapter as are not incon-
> "sistent with the special laws relating to such
> "specially chartered company."

The obvious and only purpose of this was to conform the powers of specially chartered trust companies to the general law. It is impossible to discover in these acts anything which gave these Brooklyn trust companies in 1897 any powers materially different from those possessed by such companies at the time the Mercantile Bank case arose.

II.

The provision in the statute (section 12 of the Tax Law) which allows corporations, including trust companies, having a surplus exceeding ten per centum of their capital stock, a deduction of ten per centum of the capital in determining the amount of an assessment, can not be held to effect any unjust discrimination against the stockholders of national banks.

To render such a deduction as this a grievance to the plaintiffs-in-error here it must appear that such a deduction involved increasing the rate of taxation of the banks' stockholders beyond the rate imposed upon other moneyed capital in the hands of individual citizens.

It has already been shown that, as a matter of fact, the capital of these trust companies was not employed in competition with the capital of the national banks. It follows that the deduction made cannot be held to have affected the rate of taxation imposed upon individual holders of moneyed capital. It seems to have been thought by the Legislature that ten per cent. of the capital is a fair amount to allow for depreciation and loss. In arriving at the valuation the basis of the assessment actu-

N. B.

It is, however, an obvious error in assuming, as the court below did and as is inadvertently also stated in Point II of this brief, that the 4 per cent. deduction allowed by the assessors was only a deduction of 4 per cent. on the Bank's capital. It was in fact an allowance of 4 per cent. on the Bank's "loans and discounts." (See record, bottom of page 47 and bottom of page 73.) The actual deduction was $46.48 per share—that is to say, a total of $139,440, besides the appraised value of the real estate. This exceeded 10 per cent. on the entire capital, surplus, and undivided profits of the Bank, whereas the statutory allowance to the Trust Companies was limited to 10 per cent. of their capital only.

ally made of the stock of the plaintiffs-in-error here a similar deduction was made without any special warrant of law, amounting in the aggregate to some $18,000. Ten per cent. deduction would be $30,000. Even if the Court discover any injustice in this particular deduction, it would involve a modification of the assessment trivial in its application to the individual relators. It has been repeatedly held that an error, if it be an error, of this kind does not render an assessment void, but that the relief will be limited to the excess complained of when ascertainable (*Whitbeck* vs. *Mercantile Bank*, 127 U. S., 193, 195; *Pelton* vs. *National Bank*, 101 U. S., 143; *Supervisors* vs. *Stanley*, 105 U. S., 305; *Cummings* vs. *National Bank*, 101 U. S., 153). As is pointed out in the opinion of the State court (see pp. 116, 117) this deduction of ten per cent. has been the rule for nearly fifty years. It has never before been complained of as a discrimination against the shareholders of banks, national or city. It is a deduction which trust companies share with other corporations taxed on their property.

III.

There is no reason disclosed in the record in this case for questioning the correctness of the decision made by this Court in the case of the Mercantile Bank vs. New York.

That case has been repeatedly reaffirmed.

See particularly—

Newark Bank vs. *Newark*, 121 U. S., 163.
Davenport Bank vs. *Davenport*, 123 U. S., 83.
Bank of Redemption vs. *Boston*, 125 U. S., 60.

Palmer vs. *McMahon*, 133 U. S., 660.
Aberdeen Bank vs. *Chehalis County*, 166 U. S., 440.
Bank of Commerce vs. *Seattle*, 166 U. S., 463.

In the case of Aberdeen Bank *vs.* Chehalis County (166 U. S., 463) numerous decisions interpreting from various points of view the restrictions as to the power of the States to tax shares of national banks are reviewed, and the general principles laid down in *Mercantile Bank* vs. *New York* are adhered to. The Chehalis case is itself a controlling authority for the proposition that "moneyed capital" invested in mortgages and like securities is not moneyed capital in competition with that of national banks.

The only real point substantially urged against the course pursued by the Brooklyn Assessors is that in taxing the trust companies the latter were allowed to deduct not only their debts, but the items of their investments which are exempt from taxation; that is to say, government and municipal bonds, and stocks of other corporations, themselves subject to taxation; whereas the Assessors declined to deduct the United States bonds held by the First National Bank in arriving at the fair value of the stock of that bank. The point that the stockholders of national banks are not allowed the benefit of the deduction of government bonds held by the bank itself has been affirmed by this Court so often that the question can no longer be considered an open one (*Van Allen* vs. *Assessors*, 3 Wallace, 573; *People* vs. *Commissioners*, 4 Wallace, 244). The language of Mr. Justice Nelson in 3 Wallace, at page 584, has been repeatedly reaffirmed in later decisions:

> "The interest of the shareholder entitles him to "participate in the net profits earned by the bank

"in the employment of its capital during the exist-
"ence of its charter in proportion to the number
"of his shares, and upon its dissolution or termina-
"tion, to his proportion of the property that may
"remain of the corporation after the payment of its
"debts. This is a distinct, independent interest or
"property held by the shareholder like any other
"property that may belong to him. Now, it is this
"interest which the act of Congress has left subject
"to taxation by the States under the limitations pre-
"scribed."

Further, and in replying to the suggestion that the statute contemplated the taxation only of such part of the share stock as did not represent property of the bank invested in the securities of the United States, Judge Nelson said:

"If Congress had intended any such discrimina-
"tion it would have been an easy matter to have
"said so; certainly so grave and important a change
"in the use of this term, if so intended, would not
"have been left to judicial construction."

See also *Owensboro Bank* vs. *Owensboro*, 173 U. S., at p. 677.

In all these numerous decisions interpreting the restrictions in section 5219 of the U. S. Revised Statutes, the Court have pointed out that the prohibition imposed upon the States is that they shall not tax the shares of stock at a rate exceeding that imposed upon moneyed capital in the hands of individual citizens. And it has been held that the words "individual citizens" do not technically include corporations.

It is, therefore, only where it can be affirmatively shown that discrimination exists in favor of a corporation which is clearly and unmistakably using moneyed capital

in direct competition with national banks that this Court will look through the form of transaction and consider such moneyed capital so used to be the moneyed capital in the hands of the stockholders of such corporation as moneyed capital of "individual citizens." The New York Legislature have interpreted the restrictions in the spirit of these decisions and have accordingly taxed the shares of State banks in the same way that they tax the shares of national banks. The shares of State banks are, in other words, conceded to be moneyed capital in the hands of the individual citizens who own the stock, the assets of a State bank, including its capital and surplus, being in direct competition with the national banks. But this Court have repeatedly and affirmatively declined to hold that "all moneyed capital" in a State must be assessed in precisely the same method as the method pursued in assessing the stock of national banks; for example, in *Davenport Bank* vs. *Davenport* (123 U. S., at p. 85) the Court say:

> "It has never been held by this Court that the "States should abandon systems of taxation of their "own banks or of money in the hands of their other "corporations which they may think the most wise "and efficient modes of taxing their own corporate "organizations in order to make that taxation con- "form to the system of taxing national banks upon "the shares of their stock in the hands of their "owners. All that has ever been held to be necessary "is that the system of State taxation of its own "citizens, of its own banks, and of its own corpora- "tions shall not work a discrimination unfavorable "to the holders of the shares of the national bank. "Nor does the Act of Congress require anything more "than this. Neither its language nor its purpose can "be construed to go any further. Within these limits "the manner of assessing and collecting all taxes by "the States is uncontrolled by the Act of Congress."

See also, to the same purport, *Bank of Redemption* vs. *Boston* (125 U. S., p. 61) where it was held that the entire exemption from taxation of the assets of savings banks was not repugnant to the provisions of section 5219, although under the Massachusetts statutes savings banks were permitted to loan money upon the personal notes of their depositors.

It follows that the exemptions allowed by the Brooklyn Assessors to the trust companies were in no way repugnant to the restrictions of the Federal statute. As has often been pointed out, the exemption from taxation of municipal and State bonds is, in effect, a method whereby the municipality or State gets the benefit of a tax. They are enabled to issue their bonds for an amount exceeding by the amount of the tax rate what they would otherwise obtain. It is a familiar fact that trust companies are very large subscribers to municipal and State loans, and in paying the very high prices at which the municipalities and States are enabled to place their bonds and in accepting the very low rates of interest paid upon such bonds, the companies do, to all intents and purposes, pay a tax. It is furthermore true, as was pointed out in the Mercantile Bank case, that at the time the assessment here complained of was made, the trust companies were subject to the State franchise tax (New York Banking Law, secs. 182 and 183). This burden has been greatly increased by statutes since passed (chaps. 132 and 535, Laws of 1901). So far as the future is concerned the question in this case is an academic one. Under the provisions of the New York Banking Law, Section 24 (Laws of 1896, chap. 908), the individual stockholders of State and national banks are "allowed all the deductions and exceptions "allowed by law in assessing the value of other taxable "property owned by individual citizens." Accordingly

a very great number of stockholders of this national bank "swore off" these taxes (see record, pp. 39 and 108). This provision was incorporated in the New York law pursuant to the decision of this Court in *Supervisors* vs. *Stanley*, 105 U. S., 305, and *People* vs. *Weaver*, 100 U. S., 539.

They are permitted to deduct their entire indebtedness provided it has not been incurred for the purpose of evading taxation or incurred in the purchase of non-taxable property or securities (see section 6 of New York Tax Law, chap. 908 of the Laws of 1896). The result of this is that the individual shareholders of a national bank are put upon a substantial equality with all other taxpayers in the State, both individuals and corporations.

Reduced to its lowest terms the complaint of plaintiffs is that in arriving at the valuation put upon their stock the Assessors did not make a deduction of United States bonds held by the bank itself.

The exemption allowed to the trust companies of stock in other corporations subject to tax is not really an exemption. It is merely a method of avoiding double taxation. A trust company holding bank stock would have to pay on it like any other holder of such stock.

It is to be further noted that stocks of other corporations subject to tax are not in any sense "moneyed capital," and to the extent of such item in the trust companies' assets the stock of trust companies is in no sense "moneyed capital" in the hands of individuals.

IV.

There has been no change in the method of taxation of corporations under the decisions of the New York State Courts since the Mercantile Bank decision which works injustice to the stockholders in a national bank.

The suggestion is made in the brief of the plaintiffs-in-error that the New York Court of Appeals in the case of *People* ex rel. *Union Trust Co.* vs. *Coleman* (126 N. Y., 433) overturned previous rules and departed from the law on that subject as it was assumed to be by this Court in the Mercantile Bank case. It was rightly assumed in that case (121 U. S., p. 160) that it had been up to that time the practice of the New York Assessors to take into account, among other things, the market value of shares of stock in determining the taxable value of corporate property. And it is true that in the Coleman case above referred to the Court held that the market value of the shares was not a proper test of the value of the property held by a corporation. It is a well-known fact, often commented upon by the Courts in tax cases, that oftentimes the price at which stock may be selling in the market represents a value largely exceeding the proportionate value of the particular stock sold to the property of the corporation itself. Reasons why this may be so are very obvious. Sometimes, for the purpose of gaining some supposed advantage or corporate control, a very high price will be paid for limited quantities of stock offered in the market; very often the price of stock in the market goes to a very high figure and far beyond the actual value of the corporate assets, because of confidence in the corporation's future success. Earning capacity as well as tangible assets affect the market price of stock. This

change in the attitude of the New York Court of Appeals on this point has no bearing whatever in this case, for the reason, among others, that the Assessors here in reaching the value at which they assessed the stock of these plaintiffs-in-error adopted the changed rule. There is no evidence whatever in the record that the market price of the assessed stock was considered in fixing its value for purposes of taxation.

V.

The order of the New York Court should be affirmed.

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James McKeen,
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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

Filed No. 198, Apr. 10, 1902.

JOHN G. JENKINS AND ONE HUNDRED AND FORTY OTHER STOCKHOLDERS OF THE FIRST NATIONAL BANK OF BROOKLYN,

Plaintiffs-in-Error,

against

BARZELLAI G. NEFF, PRESIDENT, AND JOHN DRESCHER, JR., ET AL., CONSTITUTING THE BOARD OF ASSESSORS OF THE CITY OF BROOKLYN FOR THE TAXING YEAR 1897,

Defendants-in-Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

APPENDIX TO THE BRIEFS OF THE PLAINTIFF-IN-ERROR AND THE DEFENDANT-IN-ERROR.

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Supreme Court of the United States.

JOHN G. JENKINS and one hundred and forty other stockholders of the First National Bank of Brooklyn,
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BARZILLAI G. NEFF, President, and JOHN DRESCHER, Jr., *et al.*, Assessors, constituting the Board of Assessors of the City of Brooklyn for the taxing year 1897,
Defendants-in-Error.

Appendix to the briefs of both parties hereto, submitted for the further information of the Court, and containing the various statutes of the State of New York the consideration of which are involved in the matters at bar.

1. The statute under which trust companies were taxed in 1897—

Section 12, "The Tax Law," chapter 908, Laws 1896, of the State of New York:

Taxation of corporate stock.—The capital stock of every company liable to taxation, except such part of it

as shall have been excepted in the assessment-roll or shall be exempt by law, together with its surplus profits or reserve funds exceeding ten percentum of its capital, after deducting the assessed value of its real estate, and all shares of stock in other corporations actually owned by such company which are taxable upon their capital stock under the laws of this state, shall be assessed at its actual value.

2. The statute under which banks were taxed in 1897—

"The Tax Law," chapter 908, Laws 1896, of the State of New York:

Sec. 13. Stockholders of bank taxable on shares.—The stockholders of every bank or banking association organized under the authority of this state, or of the United States, shall be assessed and taxed on the value of their shares of stock therein; said shares shall be included in the valuation of the personal property of such stockholders in the assessment of taxes in the tax district where such bank or banking association is located, and not elsewhere, whether the said stockholders reside in said tax district or not.

Sec. 24. Bank shares, how assessed.—In assessing the shares of stock of banks or banking associations, organized under the authority of this state or the United States, each stockholder shall be allowed all the deductions and exceptions allowed by law, in assessing the value of other taxable property owned by individual citizens of this state, and the assessment and taxation shall not be at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this state. In making such assessment, there shall also be deducted from the value of such shares a sum which bears the same proportion to such value as the assessed value of the real property of such bank or banking association bears to the capital stock thereof. This is not to be construed as an exemption of the real estate of banks or banking associations from taxation.

3. The statutes under which this proceeding was instituted and conducted in State Courts—

Sections 250, 251, 252, 243 of "The Tax Law," chapter 908, Laws of New York, 1896:

Sec. 250. Contents of petition.—Any person assessed upon any assessment-roll claiming to be aggrieved by any assessment for property therein, may present to the supreme court a petition duly verified setting forth that the assessment is illegal, specifying the grounds of the alleged illegality, or if erroneous by reason of overvaluation, stating the extent of such overvaluation, or if unequal in that assessment has been made at a higher proportionate valuation than the assessment of other property on the same rolls by the same officers, specifying the instances in which such inequality exists, and the extent thereof, and stating that he is or will be injured thereby. Such petition must show that application has been made in due time to the proper officers to correct such assessment. Two or more persons assessed upon the same roll who are affected in the same manner by the alleged illegality, error or inequality, may unite in the same petition.

Sec. 251. Allowance of writ of certiorari.—Such petition must be presented to a justice of the supreme court or at a special term of the supreme court in the judicial district in which the assessment complained of was made, within fifteen days after the completion and filing of the assessment-roll and the first posting or publication of the notice thereof as required by this chapter. Upon the presentation of such petition, the justice or court may allow a writ of certiorari to the officers making the assessment, to review such assessment, and shall prescribe therein the time within which to return thereto must be made and served upon the relator's attorney, which shall not be less than ten days, and may be extended by the court or a justice thereof. Such writ

shall be returnable to a special term of the supreme court of the judicial district in which the assessment complained of was made. The allowance of the writ shall not stay the proceedings of the assessors or other persons whom it is directed or to whom the assessment is delivered, to be acted upon according to law.

Sec. 252. Return to writ.—The officers making a return to such writ shall not be required to return the original assessment-roll or other original papers acted upon by them, but it shall be sufficient to return certified or sworn copies of such roll or papers, or of such portions thereof as may be called for by such writ. The return must concisely set forth such other facts as may be pertinent and material to show the value of property assessed on the roll and the grounds for the valuation made by the assessing officers and the return must be verified.

Sec. 253. Proceedings upon return.—If it shall appear upon the return to any such writ that the assessment complained of is illegal or erroneous or unequal for any of the reasons alleged in the petition, the court may order such assessment, if legal, to be stricken from the roll, or if erroneous or unequal, it may order a reassessment of the property of the petitioner, or the correction of his assessment upon the roll, in whole or in part, in such manner as shall be in accordance with law, or as shall make it conform to the valuations and assessments of other property upon the same roll and secure equality of assessment. If upon the hearing it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or may appoint a referee to take such evidence as it may direct, and report the same to the court, with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. A new assessment or correction of an assessment made by order of the court

shall have the same force and effect as if it had been so made by the proper officers within the time prescribed by law for making such assessment.

At and prior to the time of the decision in the Mercantile Bank case trust companies of New York existed under special charters. The enumeration of powers of such companies, recited in the opinion in that case (121 U. S., p. 159), was taken from separate charters.

The Brooklyn Trust Company is the only one of the Brooklyn companies which holds such special charter. It was granted by chapter 571, Laws of 1866, and amended from time to time (chap. 110, Laws 1868; chap. 853, Laws 1869; chap. 199, Laws of 1870; chap. 383, Laws 1877; chap. 112, Laws 1882).

In 1887 a general law was first passed for the incorporation of trust companies. That is below printed in parallel columns, with the statute in force at the time of the assessment here in question.

4. The powers of trust companies:

Powers of trust companies per chapter 546, Laws of 1887—	Powers of trust companies, as revised in chapter 689, Laws 1892—
Sec. 21. All trust companies organized under this act are hereby declared to be corporations possessed of the powers and functions of corporations generally, and as such shall have power:	Sec. 156. Powers of corporation. Upon the filing of any such certificate of authorization of a trust company, the persons named therein and their successors shall thereupon and thereby become a corporation, and in addition to the powers conferred by the general and stock corporation laws, shall have power:
1. To make contracts.	
2. To sue and be sued, complain and defend, in any court, as fully as natural persons.	
3. To act as the fiscal or transfer agent of any state, municipality, body politic or corporation; and in such capacity to receive and disburse money, and transfer, register and countersign certificates of	1. To act as the fiscal or transfer agent of any state, municipality, body politic or corporation, and in such capacity to receive and disburse money, and transfer, register

stock, bonds or other evidences of indebtedness.

4. To receive deposits of trust moneys, securities and other personal property from any person or corporation, and to loan money on real or personal securities.

5. To lease, purchase, hold and convey any and all real estate necessary in the transaction of its business, or which the purposes of the corporation may require, or which it shall acquire in satisfaction or partial satisfaction of debts due the corporation under sales, judgments or mortgages, or in settlement or partial settlement of debts due the corporation by any of its debtors.

6. To act as trustee under any mortgage or bond issued by any municipality, body politic or corporation, and accept and execute any other municipal or corporate trust not inconsistent with the laws of this state.

7. To accept trusts from and execute trusts for married women, in respect to their separate property, whether real or personal, and to be their agent in the management of such property, or to transact any business in relation thereto.

8. To act under the order or appointment of any court of record as guardian, receiver or trustee of the estate of any minor, the annual income of which shall not be less than one hundred dollars, and as depository of any moneys paid into court, whether for the benefit of any such minor or any other person, corporation or party.

and countersign certificates of stock, bonds or other evidences of indebtedness.

2. To receive deposits of trust moneys, securities and other personal property from any person or corporation, and to loan money on real or personal securities.

3. To lease, hold, purchase and convey any and all real property necessary in the transaction of its business, or which the purposes of the corporation may require, or which it shall acquire in satisfaction or partial satisfaction of debts due the corporation under sales, judgments or mortgages, or in settlement or partial settlement of debts due the corporation by any of its debtors.

4. To act as trustee under any mortgage or bond issued by any municipality, body politic or corporation, and accept and execute any other municipal or corporate trust not inconsistent with the laws of this state.

5. To accept trusts from and execute trusts for married women, in respect to their separate property, and to be their agent in the management of such property, or to transact any business in relation thereto.

6. To act under the order or appointment of any court of record as guardian, receiver or trustee of the estate of any minor, the annual income of which shall not be less than one hundred dollars, and as depository of any moneys paid into court, whether for the benefit of any such minor or other person, corporation or party.

9. To take, accept and execute any and all such legal trusts, duties and powers in regard to the holding, management and disposition of any estate or property, real or personal, and the rents and profits thereof, or the sale thereof, as may be granted or confided to it by the supreme court, or by any other court of record, or by any person, corporation, municipality or other authority, and the said corporation shall be accountable to all parties in interest for the faithful discharge of every such trust, duty or power which it may so accept.

10. To take, accept and execute any and all such trusts and powers, of whatever nature or description, as may be conferred upon or intrusted or committed to said company by any person or persons, or any body politic, corporation or other authority, by grant, assignment, transfer, devise, bequest or otherwise, or which may be intrusted or committed or transferred to or vested in said company, by order of the supreme court, or any court of record, or any surrogate, and to receive and take and hold any property or estate, real or personal, which may be the subject of any such trust.

11. To purchase, invest in and sell stocks, bills of exchange, bonds and mortgages, and other securities; and when moneys or securities for moneys are borrowed or received on deposit, or for investment, the bonds or obligations of the company may be given therefor, but it shall have no right to issue bills to circulate as money.

7. To take, accept and execute any and all such legal trusts, duties and powers in regard to the holding, management and disposition of any estate, real or personal, and the rents and profits thereof, or the sale thereof, as may be granted or confided to it by any court of record, or by any person, corporation, municipality or other authority; and it shall be accountable to all parties in interest for the faithful discharge of every such trust, duty or power which it may so accept.

8. To take, accept and execute any and all such trusts and powers, of whatever nature or description, as may be conferred upon or intrusted or committed to it by any person or persons, or any body politic, corporation or other authority, by grant, assignment, transfer, devise, bequest or otherwise, or which may be intrusted or committed or transferred to it or vested in it by order of any court of record, or any surrogate, and to receive and take and hold any property or estate, real or personal, which may be the subject of any such trust.

9. To purchase, invest in and sell stocks, bills of exchange, bonds and mortgages and other securities; and when moneys or securities for moneys are borrowed or received on deposit or for investment, the bonds or obligations of the company may be given therefor, but it shall have no right to issue bills to circulate as money.

for, but nothing herein contained shall be construed as giving the right to issue bills to circulate as money.

12. To be appointed and to accept the appointment of executor of or trustee under the last will and testament, or administrator with or without the will annexed, of the estate of any deceased person, and to be appointed and to act as the committee of the estates of lunatics, idiots, persons of unsound mind and habitual drunkards.

10. To be appointed and to accept the appointment of executor of or trustee under the last will and testament, or administrator with or without the will annexed, of the estate of any deceased person, and to be appointed and to act as the committee of the estates of lunatics, idiots, persons of unsound mind and habitual drunkards.

11. To exercise the powers conferred on individual banks and bankers by section fifty-five of this act, subject to the restrictions contained in said section.

No such corporation shall have any right or power to make any contract, or to accept or execute any trust whatever, which it would not be lawful for any individual to make, accept or execute. No loan shall be made by any such corporation, directly or indirectly, to any director or officer thereof. No such corporation shall transact its ordinary business by branch office in any city not named in its certificate of incorporation or charter as the place where its business is to be transacted.

Section 55 of the Banking Law, referred to in the eleventh subdivision of the revised laws, reads as follows:

Sec. 55. Rate of interest.—Every bank and individual banker doing business in this state may take, receive, reserve and charge on every loan or discount made, or upon any note, bill of exchange or other evidence of debt, interest at the rate of six per cent. per annum; and such interest may be taken in advance, reckoning the days for which the note, bill or evidence of debt has to run.

The knowingly taking, receiving, reserving or charging a greater rate of interest shall be held and adjudged a forfeiture of the entire interest which the note, bill or other evidence of debt carries with it, or which has been agreed to be paid thereon. If a greater rate of interest has been paid, the person paying the same or his legal representatives may recover back twice the amount of the interest thus paid from the bank or individual banker taking or receiving the same, if such action is brought within two years from the time the excess of interest is taken. The purchase, discount or sale of a *bona fide* bill of exchange, note or other evidence of debt payable at another place than the place of such purchase, discount or sale at not more than the current rate of exchange for sight drafts, or a reasonable charge for the collection of the same, in addition to the interest, shall not be considered as taking or receiving a greater rate of interest than six per cent. per annum.

The true intent and meaning of this section is to place and continue banks and individual bankers on an equality in the particulars herein referred to with the national banks organized under the act of congress entitled "An act to provide a national currency, secured by pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, 1864.

5. Statute as to investment of capital of trust companies—

Banking Law, chapter 689, Laws of 1892:

Sec. 159. Investments of capital and deposits.—The capital of every such corporation shall be invested in bonds and mortgages on unincumbered real property in this state worth at least double the amount loaned thereon, or in the stocks or bonds of this state or of the United States, or of any county or incorporated city of this state duly authorized by law to be issued. The moneys received by any such corporation in trust may be invested in its dis-

cretion in the securities of the same kind in which its capital is required to be invested, or in the stocks or bonds of any state of the United States, or in such real or personal securities as it may deem proper. No such corporation shall hold stock in any private corporation to an amount in excess of ten per cent. of the capital of the corporation holding such stock.

6. The new statute of 1901 under which banks are now taxed—

Chapter 550, Laws of 1901, of the State of New York. An Act to amend the tax law relating to the taxation of the stockholders of banks and banking associations. Became a law April 25, 1901:

Sec. 2. Section twenty-four of article two of the tax law is hereby amended to read as follows:

Sec. 24. In assessing the shares of stock of banks or banking associations organized under the authority of this state or the United States, the assessment and taxation shall not be at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this state. The value of each share of stock of each bank and banking association shall be ascertained and fixed by adding together the amount of the capital stock, surplus and undivided profits of such bank or banking association, and by dividing the result by the number of outstanding shares of such bank or banking association. The rate of tax upon the shares of stock of banks and banking associations shall be one per centum upon the value thereof, as ascertained and fixed in the manner hereinbefore provided, and the owners of the stock of banks and banking associations shall be entitled to no deduction from the taxable value of their shares because of the personal indebtedness of such owners, or for any other reason whatsoever. Complaints in relation to the assessments of the shares of stock of banks and banking associations made

under the provisions of this act shall be heard and determined as provided in article two, section thirty-six, of the tax law. The said tax shall be in lieu of all other taxes whatsoever, for state, county or local purposes upon the said shares of stock, and the mortgages, judgments and other choses in action, and personal property held or owned by banks and banking associations, the value of which enters into the value of said shares of stock, shall also be exempt from all other state, county or local taxation. The tax herein imposed shall be levied in the following manner: The board of supervisors of the several counties shall, on or before the fifteenth day of December in each year, ascertain from an inspection of the assessment-rolls in their respective counties the number of shares of stock of banks and banking associations in each town, city, village, school and other tax district, in their several counties respectively, in which such shares of stock are taxable, the name of the banks issuing the same, respectively, and the assessed value of such shares, as ascertained in the manner provided in this act, and entered upon the said assessment-rolls, and shall forthwith mail to the president or cashier of each of said banks or banking associations, a statement setting forth the amount of its capital stock, surplus and undivided profits, the number of outstanding shares thereof, the value of each share of stock taxable in said county, as ascertained in the manner herein provided, and the aggregate amount of tax to be collected and paid by such bank or banking association, under the provisions of this act. A certified copy of each of said statements shall be sent to the county treasurer. It shall be the duty of every bank or banking association to collect the tax due upon its shares of stock from the several owners of such shares, and to pay the same to the treasurer of the county wherein said bank or banking association is located, and in the city of New York to the receiver of taxes thereof, within fifteen days after the receipt by it of the statement of assessment and tax herein provided for; and any bank

or banking association failing to pay the said tax as herein provided shall be liable by way of penalty for the gross amount of the taxes due from all the owners of the shares of stock, and for an additional amount of one hundred dollars for every day of delay in the payment of said tax. Every bank or banking association so paying the taxes due upon the shares of its stock shall have a lien on the shares of stock and on all property of the several share owners in its hands or which may at any time come into its hands for reimbursement of the taxes so paid on account of the several shareholders, with legal interest; and such lien may be enforced in any appropriate manner. The tax hereby imposed shall be distributed in the following manner: The board of supervisors of the several counties shall ascertain the tax rate of each of the several town, city, village, school and other tax districts in their counties, respectively, in which the shares of stock of banks and banking associations shall be taxable, which tax rates shall include the proportion of state and county taxes levied in such districts, respectively, for the year for which the tax is imposed, and the proportion of the tax on bank stock to which each of said districts shall be respectively entitled shall be ascertained by taking such proportion of the tax upon the shares of stock of banks and banking associations, taxable in such districts, respectively, under the provisions of this act, as the tax rate of such tax district shall bear to the aggregate tax rates of all the tax districts in which said shares of stock shall be taxable. The said board of supervisors shall issue their warrant or order to the county treasurer on or before the fifteenth day of December in each year, setting forth the number of shares of bank stock taxable in each town, city, village, school and other tax district in said county, in which said shares of stock shall be taxable, the tax rate of each of said tax districts for said year, the proportion of the tax imposed by this act to which each of said tax districts is entitled, under the provisions hereof, and commanding him to collect the same, and to pay to

the proper officer in each of such districts the proportion of such tax to which it is entitled under the provisions of this act. The said county treasurer shall have the same powers to enforce the collection and payment of said tax as are possessed by the officers now charged by law with the collection of taxes, and the said county treasurer shall be entitled to a commission of one percentum for collecting and paying out said monies, which commission shall be deducted from the gross amount of said tax before the same is distributed. In issuing their warrants to the collectors of taxes, the boards of supervisors shall omit therefrom assessments of and taxes upon the shares of stock of banks and banking associations. All assessments of the shares of stock of banks and banking associations made on or after January first, nineteen hundred and one, and prior to the passage of this act, shall be null and void, and new assessments thereof shall be made agreeably to the provisions of this act. Provided, that in the city of New York the statement of bank assessment and tax herein provided for shall be made by the board of tax commissioners of said city on or before the fifteenth day of December in each year, and by them forthwith mailed to the respective banks and banking associations located in said city, and a certified copy thereof sent to the receiver of taxes of said city. The tax shall be paid by the respective banks in said city to the said receiver of taxes within fifteen days after the receipt of said statement, and said tax shall be collected by the said receiver of taxes, and shall be by him paid into the treasury of said city to the credit of the general fund thereof. This act is not to be construed as an exemption of the real estate of banks or banking associations from taxation.

The two new statutes of 1901 under which trust companies are now taxed—

Chapter 132, Laws of 1901, as amended by chapter 535, Laws of 1901, section 1; chapter 132 of the Laws of 1901, entitled "An Act to amend the tax law in relation to the

taxation of trust companies," is hereby amended so as to read as follows:

Sec. 187A. Franchise tax on trust companies.—Every trust company incorporated, organized or formed under, by or pursuant to a law of this state, and any company authorized to do a trust company's business solely or in connection with any other business, under a general or special law of this state, shall pay to the state annually for the privilege of exercising its corporate franchise or carrying on its business in such corporate or organized capacity, an annual tax which shall be equal to one per centum on the amount of its capital stock, surplus and undivided profits. Any corporation taxed under this section, for the year ending June thirtieth, nineteen hundred and one, shall be credited by the Comptroller with one-third of the amount of taxes paid by it into the state treasury under the provisions of section one hundred and eighty-two of the tax law for the year ending October thirty-first, nineteen hundred.

Chapter 132, Laws 1901, contains the following provisions—

Sec. 2. Section one hundred and eighty-nine of such chapter (908, Laws 1896), is hereby amended by adding thereto a subdivision to be subdivision seven thereof, and to read as follows:

7. Trust companies.—Every company liable to pay a tax under section one hundred and eighty-seven a of this chapter shall, on or before August first in each year, make a written report to the comptroller of its condition at the close of business on June thirtieth preceding, separately stating the amount of its capital stock, the amount of its surplus, and the amount of its undivided profits, and containing such other data, information or matter as the comptroller may require.

Sec. 3. Section one hundred and ninety-four of such chapter (908, Laws 1896) is hereby amended to read as follows:

Sec. 194. Payment of tax and penalty for failure.—A tax imposed by sections one hundred and eighty-two or one hundred and eighty-six of this chapter, shall be due and payable into the state treasury on or before the fifteenth day of January in each year. A tax imposed by section one hundred and eighty-four of this chapter on a transportation or transmission corporation, or by section one hundred and eighty-five, on elevated or surface railroads not operated by steam, shall be due and payable into the state treasury on or before the first day of August in each year. A tax imposed by section one hundred and eighty-seven *a*, one hundred and eighty-seven *b* or one hundred and eighty-seven *c* shall be due and payable into the state treasury on or before the first day of September in each year. A tax imposed by section one hundred and eighty-eight of this chapter on a foreign banker shall be due and payable into the state treasury on or before February first in each year. If such tax in any case is not paid within thirty days after the same becomes due, or if the report of any such corporation is not made within the time required by this article, the corporation, association, joint stock company, person or partnership, liable to pay the tax, shall pay into the state treasury, in addition to the amount of such tax, a sum equal to five per centum thereof, and one per centum additional for each month the tax remains unpaid, which sum shall be added to the tax and paid or collected therewith. Every corporation, association, joint stock company, person or partnership failing to make the annual report required by this article, or failing to make any special report required by the comptroller, within any reasonable time to be specified by him, shall forfeit to the people of the state the sum of one hundred dollars for every such failure, and the additional sum of ten dollars for each day that such failure continues. Such

tax shall be a lien upon and bind all the real and personal property of the corporation, joint stock company or association liable to pay the same from the time when it is payable until the same is paid in full.

Sec. 4. Section two hundred and two of such chapter (908, Laws 1896) is hereby amended to read as follows:

Sec. 202. Exemptions from other state taxation.—The personal property of every corporation, company, association of partnership, taxable under this article, other than for an organization tax, shall be exempt from assessment and taxation upon its personal property for state purposes, and the personal property of every corporation taxable under section one hundred and eighty-seven *a* of this article, other than for an organization tax, and as provided in chapter thirty-seven of the general laws, shall be exempt from assessment and taxation for all other purposes, if all taxes due and payable under this article have been paid thereby. The personal property of a private or individual banker, actually employed in his business as such banker, shall be exempt from taxation for state purposes, if such private or individual banker shall have paid all taxes due and payable under this article. Such corporation and private or individual banker shall in no other respect be relieved from assessment and taxation by reason of the provisions of this article. The owner and holder of stock in an incorporated trust company liable to taxation under the provisions of this act shall not be taxed as an individual for such stock.

Respectfully submitted,

FRANK HARVEY FIELD,
For Plaintiffs-in-error.

JAMES MCKEEN,
For Defendants-in-error.